AMENDMENTS TO THE DRAWINGS

Attached hereto in an Appendix is one (1) sheet of replacement drawings. The replacement sheet, which includes FIGS. 5-7, replaces the original drawing sheet that also includes FIGS. 5-7.

REMARKS

1. In response to the Office Action mailed June 24, 2010, Applicants respectfully request reconsideration. Claims 1-3, 5, 6, 9-11, 20, 22, 23, and 39-47 were last presented for examination. By the foregoing Amendments, claims 1-3, 5, 6, 9-11 and 47 have been amended; claims 20, 22, 23 and 39-46 have been cancelled; and claims 48-60 have been added. Upon entry of this paper, claims 1-3, 5, 6, 9-11 and 47-60 will be pending in this application. Of these twenty-two (22) claims, two (2) claims (claims 1 and 49) are independent.

2. Based upon the above Amendments and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered and withdrawn.

Election/Restrictions

3. In the Office Action, the Examiner alleges that claims 20, 22, 23 and 39-45 are directed to an invention that is independent or distinct from the invention originally claimed, and alleges that the originally presented invention was constructively elected. The Examiner also withdrew claims 20, 22, 23 and 39-45 from consideration as allegedly being directed to a non-elected invention.

4. By the above amendments to the claims, Applicants have cancelled claims 20, 22, 23 and 39-45. Applicants submit that no new matter is added by these amendments.

Claim Rejections under §103

5. The Examiner rejected claims 1-3, 5-6, 9-11 and 46-47 under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2004/0147825 to Milojevic et al. (hereinafter, "Milojevic") in view of U.S. Patent No. 5,394,865 to Salerno et al. (hereinafter, "Salerno"). Applicants respectfully request that these rejections be reconsidered and withdrawn for at least the following reasons.

Claim 1

6. In the Office Action, the Examiner relies primarily on Milojevic in the rejection of Applicants' claim 1 under 35 U.S.C. §103. (*See*, Office Action, pg. 3.) Milojevic discloses a carrier member 160 that adopts a spirally-curved configuration unless straightened through the use of a straightening means. (*See*, Milojevic, para. [0264] and FIGS. 21-23.) The Examiner recognizes that Milojevic fails to disclose a "stylet having one or more optic fibres." (*See*, Office Action, page 3). However, to cure this deficiency of Milojevic, the Examiner relies upon Salerno. Specifically, the Examiner states that "[Salerno] discloses a fiber view lighted stylet that includes multiple fibre optic cables capable of transmitting light and visual information." (*See*, Office Action, page 3.) The Examiner then concludes that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the stylet as taught by Milojevic, with [a] lighted stylet as taught by [Salerno], since such a modification would provide the predictable results of a stylet with optic fibers." (*See*, Office Action, page 3.)

7. As stated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." (127 S.Ct. 1727, 1741 (2007).) The Supreme Court further recognized that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some ***articulated reasoning with some rational underpinning to support the legal conclusion of obviousness***." (*See KSR*, 127 S.Ct. at 1741 (citing *In re Kahn*, 441 F.3d 977, 988 (C.A.Fed. 2006); emphasis added.) Without addressing whether the Examiner has provided sufficient reasoning to support the combination, Applicants respectfully assert that even if the references were combined as proposed by the Examiner, the resulting combination would still not contain all elements of Applicants' claim 1.

8. Salerno discloses a medical or dental instrument having an illuminated, malleable "stylet" or probe that encases at least one flexible fiber optic cable. (*See*, Salerno, col. 1, lines 11-15, 45-47, 57-58, and 66-67.) The probe, with the flexible fiber optic cable

positioned therein, is bendable into a desired configuration and inserted into a patient's body. (*See*, Salerno, col. 5, lns. 26-33.) The probe is used to illuminate and inspect regions within the patient's body. (*See*, Salerno, col. 1, lns. 52-68.)

9. As noted, Salerno also refers to the malleable probe as a "stylet." However, as used in Salerno, the term "stylet" simply means a slender medical probe or device, and is not meant to imply any stiffening functionality. This is consistent with the disclosure of Salerno, which, with regard to the "stylet," specifically discloses a probe 14 that includes two coaxially-arranged, flexible, fiber optic cables 18 and 22, and flexible or malleable materials 20 and 24 that encase fiber optic cables 18 and 22, respectively. (*See*, Salerno, col. 1, lines 66-67; col. 2, lines 36-50; and col. 5, lines 6-8.) Salerno states that "[t]he fiber optic cables 18, 22 are flexible at room temperature." (*See*, Salerno, col. 3, lines 50-51.) Salerno also describes a "malleable stylet (or probe)" that may be part of an instrument used in "an intubation procedure." (*See*, Salerno, col. 1, lines 65-67; and col. 5, line 26-33.)

10. Because Salerno's probe is flexible and malleable, as noted above, Applicants submit that Salerno's probe is not equivalent to "an optic fiber stiffening element comprising **one or more optic fibers configured to bias said carrier member into a substantially straight configuration**," as recited in Applicants' claim 1. (Emphasis added.) In particular, Applicants submit that Salerno fails to disclose that Salerno's flexible probe has sufficient rigidity to bias a curved "carrier member into a substantially straight configuration when [it is] disposed in said lumen," as recited in Applicants' claim 1. Additionally, Applicants note that claim 1 recites "an optic fiber stiffening element comprising **one or more optic fibers configured to bias said carrier member** into a substantially straight configuration when disposed in said lumen." (*See*, Applicants' claim 1, above; emphasis added.) However, Applicants submit that Salerno fails to disclose that fiber optic cables 18 and 22 are themselves rigid enough to bias a carrier member from the curved configuration recited in Applicants' claim 1 into a substantially straight configuration. Rather, as noted above, Salerno discloses flexible fiber optic cables disposed in malleable shells. The flexible fiber optic cables of Salerno appear to conform to the shape given to them by at least one

malleable encasing material. (*See*, Salerno, col. 1, lines 57-58; col. 2, lines 36-46; and col. 3, lines 50-68.) This further supports the conclusion that Salerno fails to disclose that which is missing from Milojevic.

11. In the Office Action, the Examiner states that "the optic fibers of [Salerno] being inserted inside the lumen of the carrier member will provide stiffening of the carrier member in a greater amount [than] nothing being inserted in the lumen." (*See*, Office Action, pg. 4.) However, as noted above, Salerno discloses flexible fiber optic cables disposed in malleable shells. Thus, even assuming, without admitting, that a flexible probe like the one taught by Salerno would provide some marginal amount of stiffening when inserted into the lumen of a carrier member, Applicants submit that Salerno fails to disclose that its optical fibers have sufficient rigidity to bias a carrier member from a curved configuration into a substantially straight configuration. (*See*, Applicants' claim 1, above.)

12. For at least the reasons discussed above, Applicants submit that Salerno's flexible probe is not equivalent to the optic fiber stiffening element recited in Applicants' claim 1. As such, Applicants submit that the Examiner's proposed combination of Milojevic and Salerno does not contain all of the features of Applicants' claim 1.

13. Accordingly, Applicants respectfully request that this rejection be reconsidered and withdrawn.

New Claim 49

14. Applicants' new claim 49 recites, in part, "an elongate carrier member having a plurality of electrodes mounted thereon and at least one lumen extending at least partially through said carrier member; and an optic fiber stiffening element comprising one or more optic fibers configured to bias said carrier member into a substantially straight configuration when disposed in said lumen." (*See*, Applicants' claim 49, above.) Applicants' new claim 49 further recites "wherein said carrier member is configured to assume a curved configuration, in which said carrier member is curved to match the curvature of a surface of a cochlea, when said optic fiber stiffening element is removed from said lumen." (*See*,

Applicants' claim 49, above.) Applicants submit that the Examiner's proposed combination of Milojevic and Salerno fails to render obvious Applicants' new claim 49 at least for reasons similar to those discussed above in relation to Applicants' claim 1. Specifically, Applicants submit that Salerno fails to disclose that Salerno's flexible probe is rigid enough to bias a carrier member from the curved configuration recited in Applicants' claim 49 into a substantially straight configuration.

Dependent claims

15. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of record.

Amendments to the Specification

16. Applicants have amended the title to remove "AN" from the beginning of the title, in compliance with Manual of Patent Examining Procedure (MPEP) section 606, to replace the word "FIBRE" with the American-English equivalent, "FIBER", and to better reflect the claimed subject matter.

17. Applicants have also amended the specification to change duplicate reference numbers used in the specification. In originally-filed specification, reference number "55" was used to indicate both an endoscopic system and depth markers described in the specification. As such, Applicants have amended the specification so that the disclosed markers correspond to reference number 57.

18. Applicants respectfully request entry of these amendments.

Amendments to the Drawings

19. Applicants submit a Replacement Drawing sheet herewith to change a duplicate reference numbers used in the originally filed drawings. In FIGS. 5 and 6 of the originally filed drawings, reference number "55" was used to indicate both an endoscopic system and

depth markers described in the specification. As such, in the enclosed replacement sheet, the reference number 55 referring to the markers has been replaced with reference number "57" in FIGS. 5 and 6.

20. Applicants respectfully request entry of these amendments.

CONCLUSION

21. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

22. Applicants make no admissions by not addressing any outstanding rejections or bases of rejections. Furthermore, Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application. Any cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicants reserve the right to purse such claims in a continuation or divisional application.

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Respectfully submitted,

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APPENDIX